



THOMAS M. MENINO
Mayor

CITY OF BOSTON
LAW DEPARTMENT

City Hall, Room 615
Boston, MA 02201

EX PARTE OR LATE FILED

ORIGINAL

MERITA A. HOPKINS
Corporation Counsel

August 1, 2002



Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* Submission in WT Docket No. 02-100

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the Commission's Local and State Government Advisory Committee (the "LSGAC"), on behalf of itself and the other local and state governmental entities listed in Attachment I, submits this notice of *ex parte* submission in the above-captioned proceedings.

On July 26, 2002, the individuals listed in Attachment I, representing the local and state governmental entities and organizations indicated, met at various times between the hours of 9:00 a.m. and 12:00 p.m. with Deputy Chief Jeanne Kowalski, Wireless Telecommunications Bureau, Associate Chief Peggy Greene, Media Bureau, Salomon Satche, Engineer, Office of Engineering and Technology, Michael Wilhelm, Legal Advisor, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, and Gene Fullano, Legal Advisor to the Bureau Chief, Consumer and Governmental Affairs Bureau. A copy of the agenda for the LSGAC's July 26 meeting is included in Attachment 2, hereto.

The discussion regarding federal preemption of Anne Arundel County's ("Anne Arundel") zoning ordinance focused primarily on the current Petition for Declaratory Ruling filed by Cingular Wireless ("Cingular") in response to recent amendments to Anne Arundel's zoning ordinance aimed at reducing intolerable interference with the county's 800 MHz public safety communications system. Representatives of Anne Arundel stated that while they had been in discussions with the industry regarding the interference problem and possible solutions that would be mutually acceptable, Cingular filed the current Petition for Declaratory Relief.

Representatives from Anne Arundel briefed the LSGAC and Commission officials on its current zoning ordinance and the pervasiveness of current interference from co-located Nextel and Cingular wireless facilities, citing to a recent study which found a total of 61 deadspots within a ¼ mile radius of radio frequency interference around the carriers' wireless facilities. As a result, emergency communications cannot be transmitted in multiple counties, airports and agencies, creating a serious risk to public health and safety. This further causes Anne Arundel to be out of compliance with other regulations governing public safety communications. While the Commission has recommended that Anne Arundel change or update its public safety communications system, this will not fix the current interference problem. Attachment 3, hereto,

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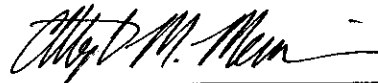
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contains a summary of Cingular Wireless' challenge to Anne Arundel's zoning ordinance as well as a Fact Sheet referred to by Anne Arundel officials at the meeting.

While Cingular argues that radio frequency interference is a seamless interstate process and that Anne Arundel's zoning ordinance is a regulation of radio frequency interference, Anne Arundel reiterated its position that its zoning ordinance should be permitted because it relates directly to the public health and safety of its residents and involves the placement, modification and construction of wireless facilities which the Telecommunications Act of 1996 allows localities to regulate.

Thank you for your attention to this matter. Please direct any questions regarding this *ex parte* submission to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris M. Mensoian", is written over a horizontal line.

Merita A. Hopkins
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Christopher M. Mensoian
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for Thomas M. Menino
Mayor, City of Boston
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On Behalf of the Local and State Government Advisory Committee

Attachment I

Local and State Government Advisory Committee and Staff

Government/Organization

Representative

NATO
Boston, Massachusetts
Boston, Massachusetts
Boston, Massachusetts
Metro Radio Board/Minneapolis, Minnesota
Louisville, Kentucky
Plano, Texas
Plano, Texas
Eugene, Oregon
Miller & Van Eaton, P.L.L.C.
Miller & Van Eaton, P.L.L.C.
Anne Arundel County, Maryland
Anne Arundel County, Maryland
Anne Arundel County, Maryland
Anne Arundel County, Maryland
Arvada, Colorado, LSGAC Chair
Montgomery County, Maryland, LSGAC Vice Chair
Montgomery County, Maryland
Dearborn, Michigan
National League of Cities
FCC
FCC
FCC
FCC
FCC

Libby Beaty
Eve Piemonte-Stacey
Merita Hopkins
Christopher Mensoian
Bill Dean
Darryl Owens
Julie Fleischer
Steve Stovall
Nancy Nathanson
Jim Hobson
Nick Miller
Linda Schuett
Jay Cuccia
Roger Simonds, Sr.
Tom Shanahan
Ken Fellman
Marilyn Praisner
Jane Lawton
Bill Irving
Juan Otero
Jeanne Kowalski
Michael Wilhelm
Gene Fullano
Salomon Satche
Emily Hoffnar

Attachment II

FCC LOCAL AND STATE GOVERNMENT ADVISORY COMMITTEE

MEETING AGENDA

Friday, July 26, 2002

LOCATION:

FCC Offices, The Portals, 445 12th Street S.W.
Commission Meeting Room (12th Street entrance level)

8:30 a.m.

Greetings & Introductions.

9:00 a.m. – 10:30 a.m.

LSGAC and FCC Staff discussion of wireless interference with public safety communications (generally) and Anne Arundel County – Cingular proceeding; meeting with representatives of Anne Arundel County proceedings (LSGAC, its Staff and FCC Staff only). Jeanne Kowalski, Deputy Division Chief, Public Safety, Wireless Telecommunications Bureau, Saloman Şatche, Engineer, Office of Engineering and Technology

10:30 a.m. – 10:45 a.m.

Break

10:45 a.m. – 11:15 a.m.

LSGAC discussion of possible recommendation on wireless interference matters (LSGAC and its Staff only)

11:15 a.m. – Noon

LSGAC discussion – response to July 1 letter from Industry Rights of Way Working Group (LSGAC and its Staff only)

Noon - 1:30 p.m.

Working lunch -- FCC and LSGAC discussion of various issues (LSGAC, its Staff and FCC Staff only).

- Update from FCC Staff on status of cable modem, DSL, wireline deregulation and competitive networks proceedings. Representative of Wireline Competition Bureau, Peggy Greene, Associate Chief, Media Bureau
- Update from FCC Staff on Revisions to Cable Television Rate Regulations; Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulations (MM Docket Nos. 92-266 and 93-215); Adoption of a Uniform Accounting System for the Provision of Regulated Cable Service (CS Docket No. 94-28); and Cable Pricing Flexibility (CS Docket No. 96-157). Peggy Greene, Associate Chief, Media Bureau
- Telecommunications Service Priority program – presentation from Ken Moran, Director, National Defense and Security, Office of Engineering and Technology.

1:30 p.m. – 2:30 p.m.	Status of 800 MHz issues; Nextel proceeding (LSGAC, its Staff, and FCC only). Michael Wilhelm, Legal Advisor, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.
2:30 p.m. – 3:15 p.m.	FCC complaint tracking issue – follow-up with FCC Staff on LSGAC issues and possible resolution (LSGAC, its Staff and FCC Staff only). Gene Fullano, Legal Advisor to the Bureau Chief, Consumer and Governmental Affairs Bureau
3:15 p.m. – 3:30 p.m.	Break
3:30 p.m. – 4:15 p.m.	LSGAC discussion of follow-up to ROW meetings, and possible advisory recommendation in cable modem and DSL proceedings (LSGAC and its Staff only).
4:15 p.m. – 4:30 p.m.	Upcoming meeting schedule/Other issues.
4:30 p.m.	Adjourn.

Attachment III

M I L L E R & V A N E A T O N
— P. L. L. C. —

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July 18, 2002

TO: LSGAC

FROM: Miller & Van Eaton, P.L.L.C.

SUBJECT: Cingular Wireless challenge to Anne Arundel County zoning ordinance

On January 22, 2002, the County adopted (Bill 93-01) amendments to its ordinance concerning the siting of telecommunications facilities, including personal wireless service facilities. The revisions became effective March 8, 2002. Developments leading up to and immediately following the amendments are recounted in the two-page fact sheet prepared for LSGAC by the County.

On April 23rd, beyond the time Cingular could have challenged the amendments in court, the carrier filed at the FCC a request for the agency to declare the revised ordinance preempted because the Congress intended the FCC to have exclusive authority over matters involving radio frequency interference ("RFI"). The amendments attacked by Cingular require, among other things, that applicants for wireless telecommunications facility uses certify they will not interfere with public safety radio communications, under penalty of revocation of use permits should interference occur.

The FCC called for public comment on the Cingular request -- initial views June 10th, replies, June 25th. The County filed May 24, 2002 a Motion to Dismiss the request on the ground that zoning challenges are committed exclusively to the courts under Section 332(c)(7)(B)(v) of the Communications Act. On June 3rd, Cingular opposed the Motion, asserting that it was challenging the County's authority to regulate RFI, a subject reserved to the FCC.

In its Comments of June 10th, the County reiterated its belief that the courts have exclusive jurisdiction over the Cingular request. Observing that the FCC has discretion not to issue

declaratory rulings, the County noted that the merits need not and should not be decided now because:

- The ordinance is a “work in progress,” with potential further amendments still under discussion by the County and affected wireless carriers.
- The ordinance has not yet been applied in a way demonstrably harmful to the carriers.
- Pending the protracted resolution of a major 800 MHz spectrum realignment rulemaking, the County and the carriers need time and flexibility to engage in local mitigation efforts.

On the merits, the County challenged Cingular’s chief premise that Congress meant for the FCC to “occupy the field” of RFI, noting that local authority over “placement, construction and modification” of wireless facilities under Section 332(c)(7)(A) is absolute and unqualified. Moreover, the subject of interference to public safety radio invokes health and safety concerns traditionally committed to local and state governments.

Most commenters -- wireless carriers in the main -- supported Cingular and its legal arguments, citing decisions from the Tenth and Second Circuits of the U.S. Court of Appeals. The County noted that, while entitled to respect, those rulings are not binding in the Fourth Circuit which would hear appeals from FCC or U.S. District Court decisions in this matter.

Timing of the FCC’s decision on the Cingular request is not known. Since it is a “permit but disclose” proceeding under Section 1.1206 of the FCC ex parte rules, interested parties are likely to engage in further written and oral communications with the agency while the matter is pending.

**IN THE MATTER OF
FEDERAL PREEMPTION OF ANNE ARUNDEL COUNTY ORDINANCE
REGULATING RADIO FREQUENCY INTERFERENCE**

WT 02-100

FACT SHEET SUBMITTED BY ANNE ARUNDEL COUNTY, MARYLAND

- ◆ Anne Arundel County began experiencing degradation of and interference with its public safety radio system as early as 1997.
- ◆ The County began working with the manufacturer of its public safety radios, Motorola to address the problem.
- ◆ Motorola and the County also contacted the FCC about the problem.
- ◆ In February of 1999, the FCC's District Manager suggested that the County remedy the problem by purchasing the portable transceivers with units with better adjacent channel rejection specifications.
- ◆ The County continued to discuss the issue with Motorola and FCC representatives.
- ◆ In January of 2000, Anne Arundel County's Chief of Police, P. Thomas Shanahan, wrote to the Chairman of the FCC describing the increase of public safety radio "dead areas" since the proliferation of cellular towers and stating that the suggestion of the District Manager of the FCC could not be complied with because Motorola did not manufacture such portable transceivers. Chief Shanahan asked for further assistance.
- ◆ The County received no further assistance from the FCC.
- ◆ Since that time, more "dead areas" have been discovered. In December of 2001, testing had revealed 41 dead areas. Since that time, there have been as many as 61 dead areas identified. The dead areas are related to telecommunications facilities for cellular and other wireless services.
- ◆ This represents a crisis for the County's public safety system, and the health and welfare of the County's citizens, as well as its public safety employees, is at stake.
- ◆ The County has attempted to work with the telecommunications industry to remedy the problem.

- ◆ Some of the carriers have been cooperative and others less so. Some have been found not to be causing interference.
- ◆ Cooperation from carriers has included providing transmission information, assisting in site testing, reconfiguring antennas, changing power levels, installing filters, and engineering other methods to decrease interference.
- ◆ The County is also committed to improving its public safety radio system and is in the process of designing a new system. Information from the wireless industry concerning its facilities is necessary to allow the County to design and implement an effective system.
- ◆ The County is also pursuing other avenues to improve its system, including a channel swap with Nextel to put the County in a position on the frequency band to better avoid interference from cellular carriers.
- ◆ Testing revealed that Cingular was a major source of interference with and degradation of the County's system.
- ◆ The County approached Cingular, and, for quite some time, Cingular was not cooperative. It would neither provide information needed to assess the situation nor cooperate with testing.
- ◆ Cingular has only reluctantly and slowly cooperated with the County in a limited fashion.
- ◆ With knowledge of the County's ongoing interference problem, Cingular began utilizing a system of switching its frequencies and power levels on a constant basis. Whatever the operational benefits for Cingular, this practice results in a greater risk of interference and has affected the County's ability to design and engineer its new radio system.
- ◆ The County's enactment of Bill 93-01 was in response to the crisis faced by the County's citizens and public safety employees, whose lives are placed in danger by the public safety employees' inability to communicate while in emergency situations.
- ◆ Bill 93-01 is a zoning ordinance and was a legitimate exercise of the County's power to preserve and protect the safety and well-being of its citizens through its zoning authority.
- ◆ The County continues to work with the carriers. Technical amendments to the ordinance, partly in response to carrier suggestions, are under consideration. Other changes may come out of this consultative process.